grant an application under Order 15 rule 6(2)(b) was upheld on appeal. Two of us happened to be in that coram, and having refreshed our memory from the Appeal Record and our notes, it is apparent that that appeal was dismissed not because we held that the court had no discretion to grant the order but due to insufficient material in the affidavit in support of the application on which the discretionary power could have been exercised.

One of the objects of the rule is to prevent multiplicity of proceedings (see per Lord Esher M.R. in *Byrne* v. *Brown*[6] and per Evershed J. at pp. 212-213 in *Bentley Motors (1931) Ltd.* v. *Lagonda Ltd.*[7]). The learned Federal Counsel had informed the court below that the respondents would be applying for consolidation of the two actions. In the circumstances, the order allowing the motorcyclist to be joined as a co-defendant is to ensure that all matters in dispute in the cause be "effectually and completely determined and adjudicated upon" as envisaged by Order 15 rule 6(2)(b) RHC. For the above reasons, the learned judge did not err in law in exercising his discretion in favour of the respondents. We would, therefore, dismiss this appeal with costs.

Appeal dismissed.

Solicitors: *Lee & Cheah.*

PENANG HAN CHIANG ASSOCIATED CHINESE SCHOOL ASSOCIATION v. NATIONAL UNION OF TEACHERS IN INDEPENDENT SCHOOLS, WEST MALAYSIA

[S.C. (Lee Hun Hoe C.J. (Borneo), Seah & Syed Agil Barakbah S.C. JJ.) July 13, 14 & November 23, 1987]

[Kuala Lumpur – Supreme Court Civil Appeal No. 18 of 1987)

Civil Procedure – Interlocutory injunction – Industrial dispute referred to Industrial Court – Action in High Court – Application for interlocutory injunction allowed – Balance of convenience – Contract not specifically enforceable in High Court – Injunction cannot be granted – Power of Industrial Court to make order for reinstatement – Specific Relief Act 1950, ss. 20(1)(b) & 54(f).

Equity – Interlocutory injunction – Contract the performance of which would not be specifically enforced – Breach of service contract – Dispute referred to Industrial Court – Balance of convenience – Specific Relief Act 1950, ss. 20(1)(b) & 54(f).

The respondents purported to act for certain teachers who were employed by the appellant. Disputes arose between the appellant, as the employer, of the one part and the teachers in the former employment of the appellant of the other part. A complaint was made to the Ministry of Labour and the Minister referred the trade dispute to the Industrial Court. The reference to the Industrial Court was made before the respondents filed the civil suit in the High Court. The respondents applied for an interlocutory injunction and this was granted by the High Court. The appellant appealed.

Held, allowing the appeal: (1) in this case, the learned judge did not appear to give any consideration to the balance of convenience. If he had done so, he seemed to have disregarded the well-established rule that a contract for service or service contract would not be specifically enforced by the High Court (section 20(1)(b) of the Specific Relief Act 1950) and that an injunction cannot be granted to prevent the breach of a contract the performance of which would not be specifically enforced (section 54(f) of the same Act);

(2) it was plain that the granting of the interlocutory injunction in this case was not an exercise of judicial discretion. The appellate court is therefore at liberty to rehear the whole application on its merits;

(3) when a trade dispute had been referred to the Industrial Court, particularly one involving allegation of wrongful dismissal, the High Court should be slow to interfere by way of interlocutory injunction except for very special circumstances;

(4) no special circumstances appear to have been shown by the respondents in the court below nor was any attempt made to establish them during the hearing of the appeal.

Cases referred to:

(1) *American Cyanamid Co.* v. *Ethicon Ltd.* [1975] A.C. 396.
(2) *Hill* v. *C.A. Parson & Co. Ltd.* [1977] 3 All E.R. 1345.
(3) *Poh Swee Siang* v. *Trustees of Tong Khoo Kongsi & Ors.* [1986] 1 M.L.J. 53.
(4) *Vine* v. *National Dock Labour Board* [1957] A.C. 488.

SUPREME COURT.

Raja Abdul Aziz Addruse (*Goh Eng Kee* with him) for the appellant.

Ranjit Rai Sharma for the respondents.

Cur. Adv. Vult.

Seah S.C.J. (delivering the judgment of the court): We allowed the appeal and set aside the interlocutory injunction granted by the Penang High Court dated January 2, 1987 with costs here and below. We indicated that we would give reasons in writing which we now do.

For the purpose of this appeal, we need only state the salient facts. The respondents, National Union of Teachers in Independent Schools, West

Malaysia, purported to act for certain teachers who were formerly employed by the appellant, Penang Han Chiang Associated Chinese School Association, on a fixed term basis, which usually commenced on January 1, and expiring on December 31 of each year. The service agreements appear to be in standard printed form and the relevant clauses read:

"5. In the event of this contract being renewed, the teacher must notify the managing committee of his/her acceptance within one week from the date the renewal of the contract is offered. Otherwise the offer is deemed to have been rejected.

6. If anyone does not receive any offer of the contract being renewed by the date of expiry of the contract, it will mean that his/her service has been terminated. The school takes no responsibility to inform him/her of his/her cessation of his/her employment".

Disputes arose between the appellant, as employer, of the one part and the teachers in the former employment of the appellant, of the other part. It is sufficient to say that a complaint was made to the Ministry of Labour and the Minister in turn had referred the trade dispute to the Industrial Court for determination under section 8 of the Industrial Relations Act 1967 (as amended). It seems that reference to the Industrial Court was made before the respondents filed the civil suit at the Penang High Court.

When the learned judge granted the interlocutory injunction, he appeared to rely on the principle expounded by the late Lord Diplock in the *American Cyanamid*[1] case that the applicant needs, amongst other things, to show that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried. The learned judge did not appear to consider the balance of convenience. If he had done so, he seemed to have disregarded the well-established rule that a contract for service or service contract would not be specifically enforced by the High Court (see section 20(1)(b) of the Specific Relief Act 1950) and that an injunction cannot be granted to prevent the breach of a contract the performance of which would not be specifically enforced (see section 54(f) of the same Act and *Hill* v. *C.A. Parson & Co. Ltd.*[2]).

In *Poh Swee Siang* v. *Trustees of Tong Khoo Kongsi & Ors.*[3] the Federal Court held that when hearing an appeal from the judge's grant or refusal to grant an interlocutory injunction the function of an appellate court is initially one of review only. It must defer to the judge's exercise of his discretion and must not interfere with it merely upon the ground that the members of the appellate court would have exercised the discretion differently. We would respectfully adopt this principle in deciding this appeal.

It was clear from a review of the facts and the ruling of the learned judge that he did not appear to give any consideration to the balance of convenience. And if he did, he failed to have due regard to the provisions of section 20(1)(b) and section 54(f) of the Specific Relief Act 1950. On this ground alone, it was plain that the granting of the interlocutory injunction was not an exercise of judicial discretion. This means that the appellate court is at liberty to rehear the whole application on its merits.

Now, this is an action where the respondents, purporting to represent former teachers employed by the appellant, alleges breaches of service cotracts, which trade dispute had been referred by the Minister of Labour to the Industrial Court for a hearing. In our judgment, when a trade dispute had been invested in the Industrial Court, particularly one involving allegation of wrongful dismissal, the High Court should be slow to interfere by way of interlocutory injunction except for very special circumstances and none appeared to have been shown by the respondents in the court below. Nor was any attempt to establish it during the hearing of the appeal. The reason, in our opinion, is obvious. The Industrial Court is the proper forum to deal with such complaint since it is empowered by the Industrial Relations Act 1967 (as amended) to order the employer to reinstate the workman in his former position or a similar position if the Industrial Court should hold that the dismissal was without just cause or excuse. No such power is vested in the High Court. The jurisdiction of the High Court is limited to an award of damages for breach of contract for wrongful dismissal or termination only and damages are usually inadequate compensation for loss of employment (see *Vine* v. *National Dock Labour Board*[4]).

For the above reasons, we set aside the interlocutory injunction dated January 2, 1987 and allowed the appeal with costs here and below. The deposit to be refunded to the appellant.

Appeal allowed.

Solicitors: *Goh Eng Kee & Co.; Sharma & Jaafar.*